

(2007) 10 AHC CK 0149

Allahabad High Court

Case No: Criminal M.A. No. 12963 of 2007

Akhil Kumar Jain and Another

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision: Oct. 1, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125, 156(3), 482
- Penal Code, 1860 (IPC) - Section 406, 498A, 504, 506

Citation: (2008) 2 ACR 1534

Hon'ble Judges: Vinod Prasad, J

Bench: Single Bench

Advocate: V.P. Gupta, for the Appellant; A.G.A., for the Respondent

Judgement

Vinod Prasad, J.

This matter is taken up in the revised list. Learned Counsel for the applicant Sri V. P. Gupta is not present. Sri Amit Sinha learned Counsel for the Respondent who had filed his power on 21.8.2007 is present alongwith learned A.G.A.

2. Two applicants Akhil Kumar Jain and Smt. Kanchan Jain have invoked the inherent jurisdiction of this Court with the prayer for quashing of the proceedings of Complaint Case No. 2700 of 2006, pending in the Court of C.J.M., Mainpuri, appellated as Vijay Kumar Jain v. Akhil Kumar Jain and Ors. under Sections 498A, 406, 504 and 506, I.P.C. and Section 3/4 of D. P. Act, P.S. Kotwali Mainpuri, district Mainpuri.

3. It transpires that an application u/s 156(3), Cr. P.C. was moved by Vijay Kumar Jain against the two applicants on which the Magistrate ordered for registration of F.I.R. and investigation. Under the orders of the Magistrate F.I.R. of Crime No. 357 of 2005 under Sections 498A, 406, 504 and 506, I.P.C. and Section 3/4 of D. P. Act was registered at P.S. Kotwali Mainpuri District Mainpuri on 22.9.2005 at 7.30 a.m. in respect of an incident alleged to have taken place on 23.8.2005 at 9 a.m.

4. The allegations levelled in the F.I.R. were that Mukti Jain had married with Akhil Kumar Jain s/o Deep Chand Jain and Smt. Kanchan Jain on 6.12.2001 according to Hindu customs and rites in which two lacs and fifty thousand rupees with some articles including Washing Machine, Colour T.V. etc. were given as dowry. Soon after the marriage Mukti Jain was harassed and the two applicants started demanding dowry of Rs. 1 lac from Mukti Jain. When the informant Vijay Kumar Jain Respondent No. 2 who is the father of Mukti Jain, came to know about the said demand he tried to pacify the matter with mother-in-law and the husband. However, the prayer of the father was unheeded and ultimately on 11.12.2002 he received a telephone call that Mukti Jain is seriously ill. Accompanied by his another daughter Kirti Jain the informant reached at the house of Deep Chand Jain on 12.12.2002 and found his daughter in a precarious condition who was in family way. She was not being properly treated medically. He advised the father-in-law Sri Deep Chand Jain for providing better treatment but Deep Chand Jain asked him to take back Mukti Jain and get her treated well. When the informant brought his daughter back with him her in-laws had not returned her ornaments and stridhan.

5. On 21.1.2003 Mukti Jain was blessed with a daughter in B. R. Nursing Home Mainpuri for which the in-laws were informed but they did not care for her. After that Respondent No. 2 requested to take back Mukti Jain but her in-laws refused to bring her back. Ultimately on 6.5.2005 Mukti Jain filed an application for maintenance u/s 125, Cr. P.C. Because of the aforesaid litigation on 23.8.2005 the applicants Akhil Jain and Deep Chandra Jain at 9 a.m. came to the house of the informant and abused the whole family and threatened them with their lives. With such allegations a F.I.R. was lodged by the father Respondent No. 2 at the concerned police station.

6. The usual investigation ultimately culminated into filing of a final report favourable to the applicants by the police on 16.10.2005 (Annexure-5). Investigating Officer came to the conclusion that informant intentionally does not want to send his daughter to her in-laws house because Mukti Jain is doing service in district Mainpuri and she also does not want to join the company of her husband and her in-laws and the allegations of demand of dowry and torture are false and fabricated.

7. The final report was objected to by filing of protest petition on 20.9.2005 by the informant. In support of his protest petition the informant Vijay Kumar Jain has examined himself in Court.

8. The trial Magistrate (C.J.M., Mainpuri) vide his order dated 30.11.2006 rejected the final report and summoned the applicants to face trial for the offence under Sections 498A, 406, 504 and 506, I.P.C. and Section 3/4 of D.P. Act hence this application to quash the whole proceeding and the summoning order.

9. After going through the averments made in the F.I.R. and in the protest petition and considering the statement of the informant recorded by the Magistrate in

support of the protest petition, it cannot be said that no offence is made out against the two applicants who are mother-in-law and the husband. There are allegations for demand of dowry and threatening of the wife who is the daughter of the informant Respondent No. 2 for capacity of dowry. At this stage the allegations levelled are to be taken to be correct on its face value. No addition or subtraction is possible at this stage nor the critical appreciation of facts alleged can be undertaken to fetch out a defence for the accused and thwart a legitimate prosecution at its very inception.

10. One fact I would like to mention here that in this matter since the dispute was between the husband and wife, this Court granted chance to the respective sides to come to the compromise by reconciliatory proceedings through an order dated 15.6.2007, but the report of the Mediator indicates that none of the parties was ready to compromise.

11. Since the offence is disclosed and the summoning order does not suffer from any infirmity of law, the prosecution of Complaint Case No. 2700 of 2006, pending in the Court of C.J.M., Mainpuri, Vijay Kumar Jain v. Akhil Kumar Jain and Ors. under Sections 498A, 406, 504 and 506, I.P.C. and Section 3/4 of D. P. Act, P.S. Kotwali Mainpuri, district Mainpuri cannot be quashed. This application is meritless and is hereby dismissed. Interim order dated 15.6.2007 stands vacated.